or lease is expressed to be subject to the claim of the caveator to the particular interest described."

It is important to remember that a caveat is not final and conclusive, that it is like an interim injunction and its purpose is only to preserve the *status quo* pending the taking of steps by the caveator to enforce his claim to an interest in the land by proceedings in the courts.

Hashim Yeop A. Sani J. quoted a passage from page 343 of *S.K. Das* on the Torrens System in Malaya in support of the proposition that if you claim only a portion you cannot caveat the whole land. That passage is part of a longer passage which reads:

"The caveat must state the nature of the interest in the land and the grounds upon which the claim is founded; mere general words are not sufficient. It must not be larger in its terms than the claim warrants and the caveat may fail because it does not sufficiently state the *quantum* of the estate or interest claimed by the caveator....

The caveator must limit this prohibition of his caveat to such dealings as his claim, if well founded, entitles him to forbid, or run the risk of paying the costs of an application to have the caveat removed and of having damages recovered against him."

The learned author in footnotes refers to several Australian and New Zealand cases which unfortunately are not available here, but that notwithstanding I see nothing in the above passage saying or implying that if you claim a registrable interest in only a portion you cannot caveat the whole land. On the contrary the above passage would in my humble opinion support my view that you can do so, provided when applying for the caveat you state the nature of the registrable interest you claim, you do not use mere general words, you do not claim more than what is warranted, the caveat sufficiently states the *quantum* of the estate or interest which you claim, and you limit the prohibition of your caveat to such dealings as your claim, if well founded, entitles you to forbid.

As regards the question whether the caveator has any caveatable interest, it is to be noted from paragraph (a) of subsection (1) of section 323 that among the persons at whose instance a private caveat may be entered is not only a person claiming title to, or any registrable interest in land, but also a person claiming a *right* to title to or registrable interest in land. At the moment the caveator here has no registrable interest in the land, but it may well be that after the merit of his claim has been tried the court may conclude that he has a right that the undertaking given to him by Mr. Ratnavale should be enforced (see *Inter-Continental Mining Co. Sdn. Bhd.*[4]), in which case the court may order specific performance, *i.e.*, order the representatives of Ratnavale's estate or their successors in title to subdivide, and give a separate and registrable title to the portion claimed. In view of this, I would say that as the caveator has a right to title to the land, he has a caveatable interest.

I would therefore allow this appeal. The respondents to pay costs here and below. The appellant's deposit to be refunded to him.

As regards the question whether or not we should order the registration of the caveat, we were told by counsel for the caveatees that since the judgment appealed from the caveat has been removed and Merah Estate has been sold, but the purchasers had notice of the caveator's claim. I think that the fairest thing to do in the circumstances is to order the restoration of the caveat and that I accordingly do, pending disposal of Alor Star High Court Civil Suit No. 263 of 1971, but the caveat to be so expressed as to prohibit any dealing in the land unless it is expressed to be subject to the claim of the caveator in that portion approximately 18,000 sq. ft. in area comprising the tindal's house now occupied by the caveator.

Since writing the above, I have seen the advice of the Privy Council in *Registrar of Titles, Johore, Johore Bahru* v. *Temenggong Securities Ltd. & Anor.*[5] delivered on April 27, 1976, and I am convinced that my view is correct, that a person who claims an interest in a specific portion may caveat the whole land, provided that he limits the effect of his caveat to cover only the particular interest claimed.

Ali and **Wan Suleiman F.JJ.** concurred.

Appeal allowed.

Solicitors: *Kumar, Chan & Chia; Khong & Son.*

BRITISH INDIA GENERAL INSURANCE CO. LTD v. DOLLAH SAHARI & ANOR.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J.) June 16, 1976]

[Kuching — Federal Court Civil Appeal No. 138 of 1975]

Insurance — Motor Insurance — Whether insurers liable to satisfy judgment obtained against insured — Motor Vehicles (Third Party Risks) Ordinance (Sarawak Cap. 130), s. 9.

In this case the 2nd defendant had obtained damages against the 1st defendant arising out of an accident in which the 1st defendant's motor vehicle was involved in an accident with a scooter ridden by the 2nd defendant. The plaintiff brought the action for a declaration that it was entitled to avoid the policy. The 2nd defendant counterclaimed for a declaration that the plaintiff was obliged to satisfy the judgment obtained by him. The learned trial judge ruled that the onus was on the plaintiff to prove on a balance of probability that the car was being driven by a learner-driver and held that the plaintiff had failed to discharge the burden. He therefore dismissed the plaintiff's claim but he declined to make the declaration in favour of the 2nd defendant. The plaintiff appealed and the 2nd defendant cross-appealed.

Held: (1) the court could not interfere with the finding of fact by the trial judge and therefore the appeal of the plaintiff should be dismissed;

(2) in this case as the 2nd defendant had obtained judgment in the case against the 1st defendant, he was entitled to a declaration that the plaintiff should satisfy the judgment.

FEDERAL COURT.

C.E. Lee for the appellant.

Daniel Tajem for the 1st respondent.

T.O. Thomas for the 2nd respondent.

Suffian L.P. (delivering the judgment of the Court): The 1st defendant (1st respondent before us) has three cars: a taxi, a car used for teaching learner-drivers and a private car. Here we are concerned only with his private car No. KA 6219.

On March 25, 1968, he signed a proposal form to insure his private car and paid a premium to the plaintiff insurance company (appellant before us).

On April 9, 1968, the plaintiff gave him a comprehensive policy. As the 1st defendant had said that he was a "driving tutor", the plaintiff issued the policy to cover the car "used for tuition purposes". The 1st defendant immediately returned the policy to the plaintiff saying that this car was exclusively for his personal and private use. Thereupon the plaintiff asked the 1st defendant to complete and submit a fresh proposal form which he did, in which he again stated that the car was exclusively for his personal and private use, and the plaintiff then issued the 1st defendant a fresh policy, the policy in question.

On January 15, 1969, while the policy was still in force, the 1st defendant's car collided with a motor scooter ridden by the 2nd defendant (2nd respondent before us).

The 2nd defendant successfully sued the 1st defendant for damages in a separate suit (Civil Suit K. 46 of 1970).

The plaintiff brought the civil suit out of which this appeal arises against the 1st defendant asking for a declaration that it is entitled to avoid the policy. In this suit, the 2nd defendant successfully applied to be joined as a co-defendant.

The plaintiff claimed that the policy was void because of non-disclosure by the 1st defendant of a material fact or of a representation of fact by the 1st defendant which was false in some material particular. In its pleadings the plaintiff alleged that at the time of the accident the car was being driven by a woman learner-driver, under the tuition of the 1st defendant who was sitting beside her on the front passenger seat, that it was then being used for tuition purposes and not as a private car.

The 2nd defendant counterclaimed against the plaintiff as follows: that he had won judgment against the 1st defendant and that by virtue of section 9 of the Motor Vehicles (Third Party Risks) Ordinance (Sarawak Cap. 130), the plaintiff was obliged to satisfy that judgment. He asked the court to declare accordingly.

The learned trial judge ruled that the onus was on the plaintiff to prove on a balance of probability that the learner-driver was driving the car at the time of the accident and held that the plaintiff had failed to discharge this burden.

He found as a fact that from the time when the woman learner-driver was picked up from her house by the 1st defendant until the accident she was sitting on the front passenger seat beside the driver, that at the time of the accident the car was driven by the 1st defendant and not by the woman learner-driver, and that the car was being used as a private car and not for tuition purposes.

He therefore held that the 1st defendant was not guilty of non-disclosure of a material fact or of a representation of fact which was false in some material particular and dismissed the plaintiff's claim. The plaintiff appeals.

The learned trial judge however declined to make the declaration sought by the 2nd defendant (he did not dismiss the 2nd defendant's counterclaim). The 2nd defendant cross appeals.

The first question in the plaintiff's appeal is whether or not the learned judge was right in dismissing the plaintiff's case against the 1st defendant. The answer to this question turns on the question whether or not he was right in finding that at the time of the accident the car was being driven by the 1st defendant. This is a question of fact on which the evidence was conflicting, but fortunately there was the admissible statement of a witness Mr. Anthony J. Bartolomucci, the American Consul at Kuching, who stated that at the time of the accident the driver was a male who had with him a female passenger. The learned judge accepted this statement. We think that it would be wrong for this court to interfere. Mr. Bartolomucci is an independent man, he was driving directly behind and following the 1st defendant, he saw the accident and he made his statement the day after the accident. We would therefore dismiss the plaintiff's appeal against the dismissal of its case against the 1st defendant.

We now turn to the cross appeal by the 2nd defendant against the refusal of the learned judge to declare that the plaintiff was obliged to satisfy the judgment in favour of the 2nd defendant in Civil Suit K. 46 of 1970.

The learned judge declined to make the declaration sought by the 2nd defendant because (he said) all he knew about the civil suit brought by the 2nd defendant against the 1st defendant was that judgment was entered against the 1st defendant on June 24, 1974, after a hearing; at that trial the 2nd defendant's case was that a woman was driving at the time of the accident and he said in evidence that he was sure it was a woman driver who was driving, whereas in the instant suit the learned judge had made a specific finding of fact that it was the 1st defendant who was driving the car then, not the woman driver. The learned judge said he did not know on what basis the learned judge in the other case gave judgment in favour of the 1st defendant, and he therefore declined to allow the 2nd defendant's counterclaim.

With respect we think that the cross appeal by the 2nd defendant should be allowed. The 2nd defendant, as already stated, relies on section 9 of Sarawak Cap. 130. The effect of that section insofar as material may be summarised as follows: Notwithstanding that an insurer may be entitled to avoid a third party policy, he must pay to a person (such as the 2nd defendant) entitled to the benefit of a judgment any sum payable under it in respect of the liability of a person insured (such as the 1st defendant) if three conditions are satisfied: —

(a) a certificate of insurance has been issued under subsection (4) of section 4 to the insured;

(b) after issue of the certificate, judgment in respect of liability required to be covered by a policy under paragraph (b) of subsection (1) of section 4 (being a liability covered by the terms of the policy) is obtained against the insured; and

(c) before or within seven days after the commencement of the proceedings in which judgment was given, the insurer had notice of the proceedings.

The plaintiff denied liability to the 2nd defendant. It specifically pleaded that the 2nd defendant had not complied with paragraph (a) of subsection (2) of section 9, which means that it disputed condition (c) above (it did not dispute the other two conditions). But at the hearing it abandoned this defence. In view of this there should have been automatic judgment allowing the 2nd defendant's counterclaim against the plaintiff.

As regards condition (b), judgment was obtained by the 2nd defendant, it was obtained against a person insured by the policy issued by the plaintiff, that judgment has not been appealed, it remains a good judgment of the court, the 2nd defendant is entitled to its benefit, therefore the plaintiff must pay to the 2nd defendant all the sum payable under it.

We therefore make the following orders:

1. That the plaintiff's appeal be dismissed with costs here (the plaintiff to pay the defendant's costs in the court below also);
2. That the 2nd defendant's cross appeal be allowed with costs here and below. The plaintiff to pay the 2nd defendant the amount payable under the judgment (dated June 24, 1974) obtained by him against the 1st defendant by way of damages, interest and costs in Civil Suit No. K. 46 of 1970;
3. Half of the appellant's deposit to be paid to each of the defendants against the defendants' taxed costs.

Order accordingly.

Solicitors: *Ee, Lim & Leong; Ibrahim & Co.; Thomas & Co.*

PUBLIC PROSECUTOR v. KHONG TENG KHEN & ANOR.

[F.C. (Suffian L.P., Ong Hock Sim and Wan Suleiman F.JJ.) August 14, 1976]

[Kuala Lumpur — Federal Court Special Case No. 1 of 1976]

Constitutional Law — Emergency — Validity of Emergency (Security Cases) Regulations, 1975 — Power of Yang Dipertuan Agung to make Ordinances — Whether Parliament sitting — Power to make regulations inconsistent with the Constitution — Validity of regulations — Emergency (Essential Powers) Ordinance, 1969 — Federal Constitution, Arts. 149 and 150.

The accused persons in this case had been charged for possession of firearms and ammunition contrary to section 57(1) of the Internal Security Act. They were committed for trial in the High Court after a preliminary inquiry. The Attorney-General under the provisions of the Emergency (Security Cases) Regulations 1975 certified that the offences were security offences and the accused were than liable to be tried under the 1975 Regulations in accordance with the special rules of evidence and procedure enacted by the Regulations. Counsel for the accused sumbitted that the trial should be held under the ordinary provisions of the Criminal Procedure Code and not under the 1975 Regulations, on the ground that those Regulations were unconstitutional and void. The learned trial judge, being of opinion that a question had arisen as to the effect of provisions of the Constitution, stopped the proceedings and referred the question of the validity of the 1975 Regulations to the Federal Court. The question posed was as follows:—

"Are the Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations 1975 invalid for any of the following grounds:—

(a) that the Regulations were made when both Houses of Parliament have sat after the Proclamation of Emergency on May 15, 1969, in contravention of Clause (2) of Article 150 of the Federal Constitution which empowers the Yang Dipertuan Agung to promulgate Ordinances only until both Houses of Parliament are sitting;

(b) that the Regulations are inconsistent with certain provisions of the Federal Constitution and Clause (6) of Article 150 of the Constitution (which provides that no provision of any Ordinance promulgated under that Article and no provision of any Act of Parliament which is passed while a Proclamation of Emergency is in force and which declares that the law appears to Parliament to be required by reason of the emergency, shal be invalid on the ground of inconsistency with any provision of the Federal Constitution or of the Constitution of the State Sarawak) does not extend to the Regulations, on the ground that the Regulations are not such an Ordinance but merely subsidiary legislation made under such an Ordinance;

(c) that the Regulations were made under sections 2(3) and 2(4) of the Emergency (Essential Powers) Ordinance No. 1 of 1969 and these sections are invalid in so far as they purport to delegate power to legislate provisions inconsistent with the Constitution whereas Clause (2) of Article 150 of the Federal Constitution does not empower the Yang Dipertuan Agung to provide for such delegation;

(d) that since the Regulations provide for procedure of trial of offences against the Internal Security Act, 1960 which has been enacted pursuant to Article 149 of the Federal Constitution (under which Article any law made pursuant to it is valid even if inconsistent with Articles 5, 9 or 10 of the Federal Constitution but not if inconsistent with other provisions of the Federal Constitution) the Regulations must conform with Article 149, but they do not conform with that Article in that they are inconsistent with the provisions of the Federal Constitution other than Articles 5, 9 and 10;

(e) that the Regulations were made under the Emergency (Essential Powers) Ordinance No. 1 of 1969 and that Ordinance was not properly or validly promulgated under Clause 2 of Article 150 of the Federal Constitution.

Held, Suffian L.P. and Wan Suleiman F.J. (Ong Hock Sim F.J. dissenting): that the Essential (Security Cases) Regulations 1975 and the Essential (Security Cases) (Amendment) Regulations, 1975, are valid because —

(a) the Regulations were made not under Clause (2) of Article 150 of the Federal Constitution but under section 2 of the Emergency (Essential Powers) Ordinance, 1969, and therefore the fact whether or not they were made when Parliament was sitting was irrelevant;

(b) by virtue of subsection (4) of section 2 of the Emergency (Essential Powers) Ordinance, 1969, the regulations were valid notwithstanding that they are inconsistent with the Constitution, but in fact it had not been shown that the regulations were inconsistent with the Constitution;

(c) it is lawful for the Yang Dipertuan Agung to delegate under section 2 of the Ordinance power to himself to make regulations inconsistent with the Constitution;

(d) the regulations do not have to comply with Article 149 of the Federal Constitution as they were made not under the authority of that Article but under the authority of Article 150;

(e) the Emergency (Essential Powers) Ordinance, 1969, were properly and validly promulgated under Clause (2) of Article 150 of the Federal Constitution;

(f) the Regulations were not *ultra vires* section 2 of the Emergency (Essential Powers) Ordinance, 1969, as the power to make regulations under subsection (2) of section 2 is expressed to be without prejudice to the generality of the powers conferred by subsection (1) of section 2 which gives the Yang Dipertuan Agung wide powers to "make any regulations whatsoever which he considers desirable or expedient for securing the public safety, the